

ANSWERS

For *Æneas Mcleod* Town Clerk of *Edinburgh*, to the
Petition presented by some particular persons, in
name of the Council and Community of the said
Burgh, to his Grace His Majesties High Commis-
sioner and the right honourable the Estates of Par-
liament.

THe said *Æneas* having Legally Acquired a Gift for Life of his Office,
from the Magistrats and Town Council of *Edinburgh*, (to whom that
Power does unquestionably belong) upon payment of 19000 Merks :
And having been in Possession by vertue of his Right, for more than seven
years, whereby he hath the benefit of a Possessory Judgment : And having ever since
his Admission, been most faithful to his Trust, and more exact than his Prede-
cessors in Office, and kept the Registers as well in order, as any other in the
Kingdom : It is confidently relyed on, that his Grace and the honourable Estates,
will not sustain Process against him before the Parliament. Because

1. That he is not obliged to answer upon a summar Complaint, in a matter of
so great Consequence, being in effect, the annulling of his Right for Life, which
according to the Acts of Regulation 1672, can onely be by a Reduction, wherein
Terms will be granted to produce, and the Reasons debate in præsentia of the Lords
of Session : Especially, seing he hath a Possessory Judgment, which gives him this
Priviledge of time to prepare himself, for defending his Gift as aforesaid.

2. The Complaint being presented by the Town Council of *Edinburgh*, there
ought no Process to be sustained thereupon, unless there had been an antecedent Act
of the said Town Council and Community warranting the same ; By the want of
which, it appears that this Pursuit is onely raised by particular persons upon privat
designs to surprise the said *Æneas* and overturn his Right, when the Parliament
cannot allow a full Hearing, being otherways taken up with the great Concerns
of the Nation. Especially

3. The Ground of the Complaint, being several matters of Fact, Inspection of
Registers, and Examination of the Warrants thereof ; which can onely be cleared
by Cognition of the Forms and Practicks relative to the said Office : It cannot be
supposed, that the High Court of Parliament, can spare so much time as is neces-
sary, for so tedious a Cognition as will be requisite, before this Affair can be De-
termined. Hence

4 The wisdom of the Nation hath determined by repeated Acts of Parlia-
ment, that all Civil Actions shall be first brought before, and decided by the Judge
Ordinary, particularly Act 45. Parl. 2d. Ja. 1. In these words, anent Eills

of Complaint, whilke may not be determined in Parliament, for divers Causes belonging to the common profit of the Realm: it is Ordained, that the said Bills be execute, and determined by the Judges, and Officers of the Courts, whom to they pertain of Law, &c. *Where the Parliament Declares, that the common profit of the Realm, will not permit their meddling in Civil Actions, in the first Instance: As also by Act. 26. Parl. 5. Ja. 3. It is Statute, that the Partie Complaining, in any part of the Realm, shall first come to his Judge Ordinary, &c. As it cannot be denied, but this is a Civil Cause, and either can be Remedied by Law, in which case the ordinary Judicatories are Patent: or the Clerks Right can not be overturned by the Laws and Customs of this Kingdom, as being his Legal Propertie and Free-hold; in which case, it is certain the Parliament will not deprive him thereof, in their JUDICATIVE Capacity.*

5. *The Remead by Parliament is extraordinary, when the Supream ordinary Judge hath committed Iniquity, so that there remains no other means of Redress: sed non recurrendum est ad Remedium extraordinarium quamdiu locus est ordinarius, Especially seing the Kings Leidges can run no Hazard of being Prejudged, since there is always recourse to the Parliament by Protestation for Remead of Law which is now cleared: whereas the bringing in Actions in the first instance to that High Court would obstruct publick business, and be a greater expence upon the Nation then the value of any such Actions.*

6. *The Clerk will not trouble his Grace, and the right Honourable, the Estates, with an particular answer to the pretended Malversations lybelled; since, as he is confident, the Parliament will remit the same to the Judge ordinary: so he will make it appear before the said Judge, that he hath behaved in all points of the said Office, as a most faithful, Exact, and dutyful Clerk, and that even in all the particulars Lybelled on.*

Lastly, The Town has no reason to complain anent the Act of Council, 1678. Seing it is in their power, to Rescind the same in all time coming, without prejudice to the said Aeneas, to whom it is already jus quesitum, and cannot be changed to his Prejudice, without a manifest Violation of privat Rights, and the known and established Rules of Law, whereby all Rights are Regulat, by the Laws standing the time of the acquiring the Right, and no Laws are drawn back to Regulate the past: and as this is a known Rule in the Law universallie received; so it is more especially our Laws, as appears by the Act 19. Par. 10 Ja. 6. And seing the said Aeneas, did upon the faith of that Act, and Gift founded upon it, purchase his Imployment at a dear Rate; as also, that the Act in it self contains nothing but what is Just, and was enacted upon occasions equally hurtful to the Town and their Clerks, as is well known, to such as know anything of the Affairs of the Town of Edinburgh: and that the Gift contains nothing singular, but what can be Justified by abundance of instances, when the matter comes to be Discussed before the Judge Ordinary. Therefore the desire of the Petitioner ought to be refused, and the whole matter remitted to the Judge Ordinary, as accords, especially seing the said Aeneas has raised a Summons of Declarator, anterior to the said Complaint.